IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

WP(C).No. 7397 of 2007(E)

PETITIONER:

ADV.MOHAMMED ZAHIR, S/O.O.V.AHAMMED,
AGED 44 YEARS, NEDUNGADI GARDENS,
WEST NADAKKAVU, CALICUT - 11.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS:
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1. THE ADDITIONAL COMMISSIONER OF CUSTOMS
AND CENTRAL EXCISE,
CALICUT COMMISSIONERATE, CALICUT.

2. THE COMMISSIONER (APPEALS), OFFICE OF
THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND
SERVICE TAX (APPEALS), C.R.BUILDING,
I.S.PRESS ROAD, COCHIN - 18.

3. SRI.C.G.SUGUNAN,
SUPERINTENDENT OF CUSTOMS & CENTRAL EXCISE,
KOZHIKODE.

BY ADV. SRI.V.AJAKUMAR
SRI.T.M.CHANDRAN
SRI.V.A.SASIDHARAN
SRI.JOSEPH ALBIN NEDUNTHALLY
SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE NOTES OF ARGUMENT SUBMITTED BY THE PETITINER ON BEHALF OF THE DELINQUENTS IN DRI/CRU/28/2002 BEFORE THE ADDITIONAL COMMISSIONER OF CUSTOMS, CALICUT.

EXT.P2: TRUE COPY OF THE ORDER DATED 18.8.2006 PASSED BY THE 2ND RESPONDENT.

EXT.P3: TRUE COPY OF THE SUMMONS ISSUED TO THE PETITIONER U/S. 108 OF THE CUSTOMS ACT BY THE 1ST RESPONDENT.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)NO.7397 OF 2007

DATED THIS THE 13th DAY OF JULY, 2007

JUDGMENT

The petitioner is a lawyer, who has been summoned under Section 108 of the Customs Act. The petitioner submits that as the lawyer appearing for some delinquents in proceedings under Section 124 of the Customs Act before the 2nd respondent, he filed an argument note in that proceedings. Apparently, based on the said argument note a show cause notice has been issued to the 3rd respondent in which proceedings have been initiated. The 3rd respondent wanted to cross examine the petitioner on the argument note. The application filed by the 3rd respondent before the adjudicating Authority seeking the same was rejected. The 3rd respondent filed an appeal and the Appellate Authority allowed the same by Ext.P2. It is under the above circumstances, the petitioner has approached this Court seeking the following reliefs.

> "i) To issue a writ of certiorari or any other appropriate writ order or direction quashing the findings arrived at by the 2nd respondent in Ext.P2 order dated 18.08.2006 that "I find that the request of the first appellant to cross examine Sri. Mohammed Zahir, Advocate of the second appellant (whose argument notes were relied upon to issue the show cause notice to the

first appellant) was turn down" and that " I am of the considered opinion that the first appellant should have been allowed to examine both these persons in the interests of justice, since their testimony would have a material bearing on the case" to the extent it refers to the petitioner.

ii) To issue a writ of certiorari or any other appropriate writ order or direction quashing Ext.P3 summons issued by the 1st respondent to the petitioner.

iii) To declare that the petitioner is not liable to be cross examine in a departmental proceedings for filing an argument notes, as the counsel for the delinquent, in a proceedings U/S 124 of the Customs Act.

iv) Any other reliefs which may be prayed for from time to time".

2. The contention of the petitioner is that he cannot be cross examined in respect of an act, which he had done in exercise of his duty as an Advocate. The Asst. Solicitor General would contend that in the proceedings in question the 3rd respondent himself has admitted that the petitioner need not be summoned. This is controverted by the 3rd respondent. According to him, the adjudicating Authority informed the 3rd respondent that the petitioner is not appearing pursuant to summons and the 3rd respondent only submitted that appropriate orders may be passed in accordance with law. The 3rd respondent now submits that since the show cause notice was issued to him based on the argument notes of the petitioner, he is entitled to cross examine the petitioner.

3. After hearing both sides, I am of opinion that an Advocate appearing in a case cannot be forced to give evidence in respect of his actions as an Advocate on behalf of a client. What he has done is only to present his arguments before the adjudicating Authority under the Customs Act. In respect of the same, he cannot be summoned for cross examination under Section 108 of the Customs Act.

4. It would be open to the 3rd respondent to submit before the Authority before whom he is facing adjudication proceedings that an argument note submitted by an Advocate cannot be taken as the basis for any action against him. Of course, findings in a final order has to be decided in the light of law on the subject and evidence adduced. In the above circumstances, Ext.P2 to the extent it directs summoning of the petitioner is quashed.

The writ petition is allowed as above.

S. SIRI JAGAN, JUDGE

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